

46 Am. Jur. 2d Judges § 211

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Judges

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IX. Disqualification to Act in Particular Case

E. Effect of Disqualification

§ 211. Validity of actions pending disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

When a motion for recusal has been filed but not yet determined, some jurisdictions permit the judge to act unless and until the recusal has been approved,¹ holding that the rules governing a change of judge divests a court of jurisdiction to take action only after a litigant moves for a change of judge and until a new judge is assigned.²

Other jurisdictions do not grant authority for the judge to act when a disqualification motion is pending,³ even where the judge is unaware of the motion due to a clerical error.⁴

In jurisdictions where a judge has no choice but to sustain the timely filing of an application for change of judge, the court is left without jurisdiction to take further action in the case,⁵ except to make the necessary order to effectuate the change⁶ or act on emergency matters,⁷ unless otherwise ordered to proceed by the presiding judge.⁸

Under a rule governing disqualification of appellate justices, if a motion to disqualify is certified to the entire court, a challenged justice may not sit with the remainder of the court to consider the motion.⁹

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Footnotes

- 1 [Lasater v. Lasater](#), 809 N.E.2d 380 (Ind. Ct. App. 2004); [Frankart v. Frankart](#), 2003-Ohio-1662, 2003 WL 1699821 (Ohio Ct. App. 3d Dist. Seneca County 2003).
- 2 [Harper v. Boyce](#), 809 N.E.2d 344 (Ind. Ct. App. 2004).
- 3 [Pugh v. Dozzo-Hughes](#), 2005 UT App 203, 112 P.3d 1247 (Utah Ct. App. 2005).

- 4 Brown v. State, 863 So. 2d 1274 (Fla. 1st DCA 2004).
5 Tatum v. Orleans Parish School Bd., 894 So. 2d 1180 (La. Ct. App. 4th Cir. 2005).
6 People v. Saltzman, 342 Ill. App. 3d 929, 277 Ill. Dec. 567, 796 N.E.2d 653 (3d Dist. 2003).
7 Bedree v. DeGroote, 799 N.E.2d 1167 (Ind. Ct. App. 2003).
8 State v. Johnson, 2004 SD 135, 691 N.W.2d 319 (S.D. 2004).
9 F.S. New Products, Inc. v. Strong Industries, Inc., 129 S.W.3d 594 (Tex. App. Houston 1st Dist. 2003).

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